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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re K.B. et al., Persons Coming Under the
Juvenile Court Law.

B208002
(Los Angeles County
Super. Ct. No. CK68108)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

LORI T.,

Defendant;

JUDITH B.,

Petitioner and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Marguerite Downing, Judge. Affirmed.

Anna L. Ollinger, under appointment by the Court of Appeal, for Petitioner and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Timothy M. O’Crowley, Senior Deputy County Counsel, for Plaintiff and Respondent.

Judith B. appeals from the juvenile court's denial of her motion under Welfare and Institutions Code¹ section 388 in which she and her husband, Royce B., requested modification of the juvenile court's earlier orders denying them presumed parent and de facto parent status.² We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

K.B. (born 1993), J.B. (born 1995), C.B. (born 1996), and T.B. (born 1998) were raised not by their biological mother but by Judith B. and Royce B.³ In 2007 the children became dependents of the juvenile court under section 300, subdivision (b). The B's, who never adopted the children or obtained a legal guardianship, were denied presumed parent status and de facto parent status. We affirmed the juvenile court's rulings in a nonpublished opinion in *In re K.B. et al.*, B205592, filed March 30, 2009.⁴

On March 13, 2008, the B's filed a petition under section 388 asking the court to modify its earlier orders. Specifically, the B's asked that they be declared presumed parents of the four children; that the court vacate the permanent plan hearing set under section 366.26; that the court grant reunification services to them; and that the court grant them de facto parent status.

The B's identified the following as changed circumstances meriting the reconsideration of the earlier orders: they had completed a parenting course; Royce B. had been exonerated of the criminal charges that arose from the two motor vehicle

¹ All further statutory references are to the Welfare and Institutions Code.

² Royce B. also appealed the court's ruling, but he has since passed away and his appeal has been dismissed.

³ For simplicity we will refer to Judith B. and Royce B. together as the B's.

⁴ We ordered that the record in that matter be incorporated by reference into this appeal.

collisions that occurred the day the B's came to the attention of the Department of Children and Family Services (DCFS); and Royce B. had passed a polygraph examination in which he denied four specific allegations of abuse.

The B's claimed that the requested modifications would be in the best interest of each of the four children. They would be in the best interest of C.B. because he was placed in an institutional group home with no prospects for adoption or non-institutional care; it would be better for him to be with the B's; and he wanted to reunify with them. They would be better for K.B., the B's contended, because she was bitterly unhappy in foster care and wished to return to them. The B's asserted that the modifications would be in the best interest of J.B. and T.B. because they were placed in foster care and it would be better for them to reunify with the B's.

The juvenile court denied the section 388 petition without a hearing on the basis that it did not state new evidence or a change in circumstances.

DISCUSSION

Section 388 is a general provision permitting the juvenile court, "upon grounds of change of circumstance or new evidence . . . to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." (§ 388, subd. (a).) The statute permits the modification of a prior order only when the petitioner establishes by a preponderance of the evidence that (1) changed circumstances or new evidence exists; and (2) the proposed change would promote the best interests of the child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) The petitioner must make a prima facie showing of changed circumstances and best interests in order to obtain a hearing; if the showing is inadequate to make a prima facie case, the court may deny the petition without a hearing. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250; Cal. Rules of Court, rule 5.570(d).) We review the summary denial of a section 388 petition for an abuse of discretion (*In re Anthony W.*, at p. 250), and cannot say that the court abused its discretion here.

The petition failed to state a change of circumstances or new evidence that might require a change of order. The entire showing made by the B's was dedicated to casting doubt on the allegations of abuse that had been made by K.B. and C.B.; to showing that Royce B. was no longer subject to criminal proceedings; and to demonstrating that they had received parenting education. Even if we assume this showing to be supported by admissible evidence, it offers no basis for revisiting the prior determination that Judith B. was not the presumed mother of the children: None of these matters is relevant to the question of whether Judith B. received the children into her home and openly held the children out as her natural children, the central inquiry in determining whether a person is entitled to presumed parent status. (Fam. Code, § 7611, subd. (d) [presumed father]; *In re Karen C.* (2002) 101 Cal.App.4th 932, 938 [presumed mother].) Accordingly, the section 388 petition was properly denied without a hearing as to presumed parent status because it alleged no new evidence or change in circumstances that would merit any reconsideration of that order. (*In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250; *In re Edward H.* (1996) 43 Cal.App.4th 584, 593 [hearing must be conducted if petitioner makes a showing of facts that would sustain a favorable decision if the evidence submitted in support is credited].)

Similarly, Judith B. did not make a prima facie case that new evidence or changed circumstances existed to warrant revisiting the order denying her de facto parent status. Even though she possessed many of the characteristics of a de facto parent, the trial court denied Judith B. de facto parent status on the basis of the sustained allegations of the petition. Those sustained allegations were that “The B[]s caused the children to reside in an unsanitary vehicle that was littered with feces [and] trash and emitted a foul odor. The children had not attended school in over one month. The children had not been fed for days and were hungry.”

None of the changed circumstances alleged in the section 388 petition had any bearing on these facts. The parenting class Judith B. took, entitled “Parenting Skills for Parents with Strong Willed or Out-of-Control Children,” taught a variety of discipline and conflict management skills and reminded her that it was important to tell the children

often how special they are and how much they are loved. This does not relate in any way to the sustained allegations of the petition, which concerned the conditions in which the children were living, the failure to feed them, and the failure to ensure they were in school. The conclusion of criminal proceedings against Royce B. for charged offenses arising out of the car accidents that brought the children to the attention of DCFS does not pertain at all to the failures to meet the children's physical and educational needs that were detailed in the sustained dependency petition. Finally, the polygraph exam pertaining to specific allegations of abuse made by K.B. and C.B. has no connection to the conditions that the trial court identified as the basis for denying de facto parent status. Even if the evidence to support these alleged facts was credited by the juvenile court, these facts would not sustain a favorable decision on the section 388 petition. (*In re Edward H.*, *supra*, 43 Cal.App.4th at p. 593.) Because Judith B. failed to make a prima facie case of a change in circumstances that would merit a hearing on whether to modify the order denying de facto parent status, the juvenile court did not err in denying the section 388 petition.

DISPOSITION

The judgment is affirmed.

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ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.